



**UNITED STATES HOUSE OF REPRESENTATIVES
OFFICE OF THE MAJORITY WHIP
THE HONORABLE JAMES E. CLYBURN (SC-06)**

THE WHIP PACK

WEEK OF APRIL 28, 2008

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Bill Text and Background for the Week of April 28, 2008

- H.R. 5522 – Worker Protection Against Combustible Dust Explosion and Fire Act of 2008
- H.R. 493 – Genetic Information Nondiscrimination Act as Amended

H.R. 5522 – WORKER PROTECTION AGAINST COMBUSTIBLE DUST EXPLOSION AND FIRE ACT OF 2008 (*Rep. George Miller (CA) – Education and Labor*) (*Subject to a Rule*)

Bill Text: [HTML Version](#), [PDF Version](#)

[Bill Summary and Status](#)

Rules Committee Meeting: Tuesday April 29, 2008 at 5:00 p.m. in H-313 the Capitol,

[Special Announcement](#), [Amendment Deadline: 4pm Monday 4/28](#)

Committee: [Committee on Education and Labor](#)

Committee Staff Contact: 5-3725

LEGISLATION AT A GLANCE:

PREVENTING INDUSTRIAL DUST EXPLOSIONS

The Worker Protection Against Combustible Dust Explosion and Fire Act (H.R. 5522)
([HR 5522 Summary](#))

The Worker Protection Against Combustible Dust Explosion and Fire Act would require the U.S. Occupational Safety and Health Administration to issue rules regulating combustible industrial dusts, like sugar dust, that can build up to hazardous levels and explode. In early February the Imperial Sugar refinery in Port Wentworth, Georgia, exploded, killing 13 workers and severely injuring many more. OSHA and the U.S. Chemical Safety Board, which have launched a major investigation into the Imperial Sugar explosion, have concluded that the explosion was caused by combustible sugar dust.

Workers cannot be asked to wait any longer for these basic protections. In 2006, following a series of fatal combustible dust explosions, the U.S. Chemical Safety Board conducted a major study of combustible dust hazards. It identified 281 combustible dust incidents between 1980 and 2005 that killed 119 workers, injured 718 others, and extensively damaged industrial facilities. The tragedy at Imperial Sugar shows that the threat of dust explosions is very real at industrial worksites across America and needs to be addressed immediately.

OSHA has known about these dangers for years, but has failed to act. The Chemical Safety Board urged OSHA in 2006 to issue rules controlling dust hazards, but OSHA has never offered any indication that it is planning to issue such rules. The agency has the authority to issue such rules without Congress passing new legislation, but it has failed to act. The CSB concluded that voluntary dust standards issued by the National Fire Protection Association were effective if employers complied with them.

Since 2001, in case after case and industry after industry, OSHA has chosen to emphasize voluntary compliance over setting strong rules and enforcing them. Effective voluntary guidelines to control combustible dust hazards and prevent dust explosions already exist. However, to truly protect workers, OSHA needs an enforceable standard based on these voluntary guidelines. Without an OSHA standard, many employers are unaware of the hazards of combustible dusts, while others have chosen not to adopt voluntary standards.

BACKGROUND

When dust builds up to dangerous levels in industrial worksites, it can become fuel for fires and explosions. Combustible dust can come from many sources, such as sugar, flour, feed, plastics, wood, rubber, furniture, textiles, pesticides, pharmaceuticals, dyes, coal, and metals, and therefore poses a risk across a number of different industries throughout the United States.

To address dust hazards, H.R. 5522 would:

- **Direct OSHA to issue an interim final Combustible Dust standard within 90 days.** The standard would include measures to minimize hazards associated with combustible dust through improved housekeeping, engineering controls, worker training and a written combustible dust safety program.
- **Direct OSHA to issue a final standard within eighteen months.** OSHA would be required to include relevant parts of National Fire Protection Association standards. In addition to items required in the interim standard, the final standard would include requirements for building design and explosion protection. The interim standard would remain in effect until the final standard is issued. OSHA would be required to fulfill all administrative rulemaking requirements including full public hearings, feasibility analysis and small business review.
- **Direct OSHA to include combustible dusts in the Hazard Communication Standard** which requires workers to receive information and training about the hazards they face.

House Report 110-601:

[HTML Version](#), [PDF Version](#)

Full Committee on Education and Labor Mark-up:

[Markup of H.R.5522 - Combustible Dust Explosion and Fire Prevention Act of 2008](#), April 9, 2008

- Opening Statement: [Chairman Miller](#)

Summary of Committee Votes:

- [Rep. J. Wilson, R-S.C Substitute Amendment](#) — Would have would have delayed a decision about the necessity of a combustible dust standard until completion of the Department of Labor's investigation of the February 7, 2008 explosion that occurred at Imperial Sugar, and based on data gathered from the Combustible Dust National Emphasis program. Rejected by **Voice Vote**.
- [Rep. Woolsey, D-Calif. Substitute Amendment](#) — moved some requirements originally in the Interim Standard to the Full Standard. The substitute also removed the requirement to add a specific definition of 'combustible dust' to the Hazard Communication Standard, but left the requirement that combustible dust be included as a 'physical hazard.' **Adopted by Voice Vote**.
- **Vote to Report:** Favorably Reported to the Full House, as Amended, by **Voice Vote**.

CRS Reports:

(TBA)

GAO Reports:

(TBA)

CBO Report:

[Cost Estimate](#): Ordered Reported by the Committee on the Committee on Education and Labor

Committee Hearings:

"H.R. 5522, The Combustible Dust Explosion and Fire Prevention Act of 2008">>

Full Committee on Education and Labor, March 12, 2008

- Opening Statement: [Chairman Miller](#)

Witness Testimony:

- [Rep. Barrow](#), Twelfth District of Georgia
- [Rep. Kingston](#), First District of Georgia
- [The Honorable Edwin Foulke](#), Assistant Secretary of Labor, OSHA
- [Tammy Miser](#), Sister of Victim of a 2003 Combustible Dust Explosion in Huntington, IN
- [Amy Spencer](#), Senior Chemical Engineer, National Fire Protection Association
- [The Honorable Bill Wright](#), Interim Chair, U.S. Chemical Safety and Hazard Investigation Board
- [David Sarvadi](#) Attorney, Keller and Heckman

"Have OSHA Standards Kept up with Workplace Hazards?">>

Subcommittee on Workforce Protections, Committee on Education and Labor, April 24, 2007

- Opening Statement: [Chairwoman Woolsey](#)

Witness Testimony:

- [Edwin Foulke](#), Assistant Secretary, DOL, Occupational Safety and Health Administration
- Peoples, Former Employee, Victim of Bronchiolitis Obliterans, Glistler-Mary Lee Popcorn Factory, Carthage, Missouri
- [Scott Schneider](#), Director of Occupational Safety and Health, Laborers' Health and Safety Fund of North America
- [Baruch Fellner](#), Attorney, Gibson, Dunn and Crutcher
- [Frank Mirer](#), Professor of Environmental and Occupational Health Sciences, Hunter School of Urban Public Health

Organization Statements:

(TBA)

Administration Position:

(TBA)

Fact Sheets & Talking Points:

(TBA)

Press Releases, News Articles & Related Information:

[House Labor Committee Approves Bill to Help Prevent Dust Explosions after Georgia Disaster Claims 13 Lives](#), Committee on Education and Labor, April 9, 2008

[Legislation Needed to Protect Workers from Dust Explosions like Last Month's at Imperial Sugar, Witnesses Tell Labor Subcommittee](#), Committee on Education and Labor, March 12, 2008

[U.S. Reps. Miller, Barrow Introduce Legislation to Help Prevent Dust Explosions After Georgia Disaster Claims 12 Lives](#), Committee on Education and Labor, March 3, 2008

Other Resources:

[Cosponsors of H.R. 5522](#)

H.R. 493 – GENETIC INFORMATION NONDISCRIMINATION ACT AS AMENDED (Rep. Slaughter – Education and Labor) (Subject to a Rule)

Bill Text: [HTML Version](#), [PDF Version](#)
[Bill Summary and Status](#)

Rules Committee Meeting: Tuesday April 29, 2008 at 5:00 p.m. in H-313 the Capitol, [Special Announcement](#), [Meeting Time: 5:00pm Tuesday 4/29](#)

Committees: [Committee on Education and Labor](#), [Committee on Ways and Means](#), [Committee on Energy and Commerce](#)

Committee Staff Contacts: Education and Labor: 5-3725; Energy and Commerce, Ways and Means

LEGISLATION AT A GLANCE:

H.R. 493: THE GENETIC INFORMATION NONDISCRIMINATION ACT (GINA)
([HR 493 Summary](#))

The purpose of this legislation is to protect individuals from discrimination in health insurance and employment on the basis of genetic information. Establishing these protections will allay concerns about the potential for discrimination, encourage individuals to participate in genetic research, and take advantage of genetic testing, new technologies, and new therapies.

Title I – Health Insurance

GINA will prevent health insurers from canceling, denying, refusing to renew, or changing the terms or premiums of coverage based solely on a genetic predisposition toward a specific disease. The legislation applies to employer-sponsored group health plans, health insurance issuers in the group and individual markets, Medigap insurance, and state and local non-federal governmental plans.

The HHS Standards for Privacy of Individually Identifiable Health Information (medical privacy regulations) (45 CFR Parts 160 and 164; final rule) already protect the use and disclosure of all individually-identifiable health information, including genetic information. However, a permitted 'use' of health information under the privacy rules (i.e., a specific item under 'health care operations') is underwriting, a practice that is inherently discriminatory. Therefore, this bill expressly bans the use or disclosure of genetic information for purposes of underwriting.

By building these protections into existing statutes (e.g., ERISA, PHSA, Social Security Act, and Internal Revenue Code), this Title generally uses the same mechanisms to enforce the protections established under this legislation as apply to other violations of these underlying statutes. For group health plans and health insurance issuers in the individual and group markets, the appropriate Secretary may impose penalties of \$100 per day/per person, with a minimum penalty of \$2,500--up to \$15,000 for multiple violations that are more than de minimis with an outside cap of up to \$500,000 for a violation of the protections against genetic discrimination.

With regard to the privacy provisions established by this legislation, the same enforcement structure and penalties created by the Social Security Act for the HHS privacy standards apply with regard to the privacy protections established for genetic

information by this legislation. The genetic privacy provisions are enforced by the HHS Office of Civil Rights. The Secretary of HHS may impose civil monetary penalties of \$100 per violation--up to \$250,000 and 10 years in prison for violations committed for commercial advantage, personal gain, or malicious harm.

Title II – Employment Provisions

Title II bars employers from using an individual's genetic information when making hiring, firing, promotion, and other employment-related decisions. This prohibition extends to employers, unions, employment agencies, and labor-management training programs.

Employers, labor organizations, employment agencies, and joint labor-management committees generally are prohibited from requesting, requiring, or purchasing genetic information about an employee or family member, except for a few legitimate reasons. The purchase of commercially and publicly available documents or inadvertently requesting or requiring family medical history would not violate this title. Under each of these exceptions, however, the genetic information still could not be used or disclosed.

The legislation protects applicants or employees of private employers as defined under the Civil Rights Act of 1964 (42 U.S.C. 2000e(f)), State employees, Federal employees, Congressional employees, and employees as defined in 3 U.S.C. 411(c)(0). Claimants are required to file a charge with the appropriate enforcement agency within a certain time period, prior to filing a suit in court. The bill provides for the same compensatory and punitive damages available to prevailing plaintiffs under 42 U.S.C. 1981a, which are progressive with the size of the employer and limited to cases of disparate treatment.

House Report 110-28:

Part 1: [HTML Version](#), [PDF Version](#)

Part 2: [HTML Version](#), [PDF Version](#)

Part 3: [HTML Version](#), [PDF Version](#)

Part 4: [HTML Version](#), [PDF Version](#)

Full Committee on Education and Labor Mark-up:

[H.R. 493, the "Genetic Nondiscrimination Act of 2007"](#), February 14, 2007

- Opening Statement: [Chairman Miller](#)

Summary of Committee Votes:

- [Rep. J. Kline, R-Minn. Amendment](#) — Clarifies a provision in the bill that requires an employer to keep genetic information confidential and separate from regular employment records. The amendment specifies that an employer would not need to keep three sets of records, and would allow genetic and medical records to be kept together, but in a separate place from regular personnel records. **Adopted without Objection.**
- [Rep. Walberg, R-Mich. Extend Provisions Amendment](#) — Would have extended the protections provided by the bill to include fetuses and babies in the process of being adopted. **Rejected 20-27: R 18-2; D 2-25; I 0-0.**
- [Chairman George Miller, D-Calif. Manager's Amendment](#) — Defines "family member" as someone related by blood within four generations and specifies that the bill does not require the provision of a specific benefit under a health plan. The amendment modifies the definition of genetic testing to specify that genetic analysis include testing

"regardless of the ontogenic stage" at which such analysis is conducted. It also requires that records containing genetic information be maintained according to the standards provided under the Health Insurance Portability and Accessibility Act (HIPAA). **Adopted by Voice Vote.**

- **Vote to Report:** Favorably Reported to the Full House, as Amended, by **Voice Vote.**

Subcommittee on Health, Committee on Energy and Commerce Mark-up:

[H.R. 493, the "Genetic Information Nondiscrimination Act"](#), March 13, 2007

- [Archived Web cast](#)

Summary of Committee Votes:

- [Rep. T. Murphy, R-Pa. Information from Health Plans Amendment](#) — Would have added language in two places that would have precluded a group health plan or health insurance issuer from providing information to providers or individuals about genetic tests related to coverage and benefits, treatment alternatives, disease management, case management, care coordination, or prevention programs. The amendment also would have added language in one section that would preclude an issuer of a Medicare supplemental policy from providing information to providers or individuals about genetic tests related to coverage and benefits, treatment alternatives, disease management, case management, care coordination, or prevention programs. **Rejected by a Standing Vote of 18-31.**
- [Rep. Eshoo, D-Calif. Long-Term Care Insurance Amendment](#) — Would have inserted language in two places to be applied as if the section including long-term care insurance policies with respect to benefits did not apply. **Withdrawn.**
- [Rep. Stearns, R-Fla. Define Genetic Test Amendment](#) — Would have redefined genetic test to mean an analysis of human DNA, RNA, chromosomes, proteins or metabolites, for the purpose of detecting genotypes, mutations, or chromosomal changes which are classified as predictive markers for an inheritable genetic disease, disorder, or pathological condition. **Rejected by a Standing Vote of 19-31.**
- [Chairman Pallone, D-N.J. Manager's Amendment](#) — Clarifies that language will not be construed to preclude a group health plan or health insurance issuer offering health insurance coverage in connection with a group health plan, from conditioning payment on obtaining the results of a genetic test or of informing members of such policies. Under the amendment, a group health plan or health insurance issuer may request only the minimum amount of information necessary to accomplish the intended purpose. The Amendment specifies that: genetic information includes a pregnant woman, the genetic information of her fetus, or the information of an embryo being used through reproductive technology; and the genetic nondiscrimination requirements are exclusive for group health plans, health or other insurance coverage issued through a group health plan, individual health insurance coverage and medicare supplemental policies. The amendment does not affect the application of protections against discrimination in hiring, firing, promotion or job placement and other unlawful employment practices. **Adopted by Voice Vote.**
- **Vote to Report:** Favorably Reported to the Full House, as Amended, by **Voice Vote.**

Full Committee on Ways and Means Mark-up:

[H.R. 493, the "Genetic Information Nondiscrimination Act of 2007"](#), March 21, 2007

Summary of Committee Votes:

- [Chairman Rangel, D-N.Y. Substitute Amendment](#) — Modifies the group health plan requirements under the Internal Revenue Code of 1986. Under the Amendment, a group health plan would not be able to adjust premium or contribution amounts for the people covered under the plan on the basis of genetic information. The health plan can adjust the amount of coverage if a family member with a disease or disorder is covered by the same plan. The group health plan cannot require, however, the individual to undergo a genetic test. The health plan cannot request, require or purchase genetic information in connection to an individual's enrollment. **Adopted by Voice Vote.** ([JEC Description](#), [Summary of Changes](#))
- **Vote to Report:** Favorably Reported to the Full House, as Amended, by **Voice Vote.**

CRS Reports:

[RL33903](#): Genetic Discrimination: Overview of the Issue and Proposed Legislation
[RL34376](#): Genetic Exceptionalism: Genetic Information and Public Policy
[RL30006](#): Genetic Information: Legal Issues Relating to Discrimination and Privacy
[RL33987](#): Genetic Nondiscrimination in Employment: A Comparison of Title II Provisions in S. 358 and H.R. 493, 110th Congress
[RL33988](#): Genetic Nondiscrimination in Health Insurance: A Side-by-Side Comparison of the Title I Provisions in S. 358 and H.R. 493

GAO Reports:

(TBA)

CBO Reports:

[Cost Estimate](#): Ordered Reported by the Committee on Cost Energy and Commerce
[Cost Estimate](#): Ordered Reported by the Committee on Ways and Means
[Cost Estimate](#): Ordered Reported by the Committee on Education and Labor

Committee Hearings:

["Protecting Workers from Genetic Discrimination">>](#), January 30, 2007
 Subcommittee on Health, Employment, Labor, and Pensions, Committee on Education and Labor

- Opening Statement: [Chairman Andrews](#)
- [Archived Webcast](#)

Witness Testimony:

- [Rep. Slaughter](#)
- [Rep. Biggert](#)
- [Karen Rothenberg](#), Dean and Marjorie Cook Professor of Law, University of Maryland School of Law
- [David Escher](#), Former employee, Burlington Northern Santa Fe Railroad
- [Harriet Pearson](#), Vice President, Corporate Affairs and Chief Privacy Officer, IBM Corporation
- [Burton J. Fishman](#), Partner, Fortney Scott LLP, Genetic Information Nondiscrimination in Employment (GINE) Coalition

[Hearing on Genetic Non-Discrimination>>](#), March 14, 2007

Subcommittee on Health, Committee on Ways and Means

- [Hearing Advisory](#), [Transcript](#)

Witness Testimony:

- [Karen Pollitz](#), Project Director, Georgetown University Health Policy Institute

- [Sharon Terry, M.A.](#), President and CEO, Genetic Alliance
- [David Escher](#), Former Employee of Burlington Northern Santa Fe Railroad, Reno, Nevada
- [William Corwin, M.D.](#), Medical Director, Clinical Policy, Harvard Pilgrim Health Care, Worcester, Massachusetts, on behalf of America's Health Insurance Plans

[H.R. 493, the "Genetic Information Nondiscrimination Act of 2007">>](#), March 8, 2007
Subcommittee on Health, Committee on Energy and Commerce

- [Archived Webcast](#), [Hearing Transcript](#)

Witness Testimony:

- [The Honorable Francis S. Collins, M.D., Ph.D.](#), Director, National Human Genome Research Institute, NIH
- [The Honorable Susan McAndrew, J.D.](#), Deputy Director for Health Information Privacy, Office for Civil Rights, Department of Health and Human Services
- [Ms. Sharon F. Terry, M.A., L.H.D.](#), Chair, Coalition for Genetic Fairness
- [Mr. Burton J. Fishman, J.D., Esq.](#), Fortney & Scott, LLC, On Behalf of the Genetic Information Nondiscrimination in Employment Coalition (GINE)
- [Mr. Frank Swain, J.D.](#), Senior Vice President, B&D Consulting
- [Kathy Hudson, Ph.D.](#), Director, Genetics and Public Policy Center
- [William Corwin, M.D.](#), Medical Director, Clinical Policy, Harvard Pilgrim Health Care
- [Ms. Karen Pollitz, M.P.P.](#), Research Professor, Georgetown University Health Policy Institute
- [Ms. Janet Trautwein](#), Executive Vice President and CEO, National Association of Health Underwriters

Organization Statements:

[List of Over 200 organizations that support HR 493](#)

Administration Position:

(TBA)

Fact Sheets & Talking Points:

(TBA)

Press Releases, News Articles & Related Information:

(TBA)

Other Resources:

[Cosponsors of H.R. 493](#)